

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

HERMAN C. NEWMAN, #252038,

Petitioner,

v.

CIVIL ACTION NO. 2:05cv623

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The petition alleges violation of federal rights pertaining to Petitioner's conviction in Fauquier County Circuit Court and Culpeper County Circuit Court for four (4) counts of driving/habitual offender; one (1) count of speeding to elude; three (3) counts of failure to appear; and one (1) count of grand larceny, as a result of which he was sentenced to serve fourteen (14) years, twelve (12) months, and 246 days in the Virginia penal system. On March 4, 2004, while incarcerated at the Greensville Correctional Center, Petitioner was charged with violation of an institutional infraction for possession of a sharpened instrument/weapon (Offense Code 102, a Category I offense in which the authorized penalty includes isolation for up to fifteen (15) days). On March 15, 2004, Petitioner accepted a penalty offer in which he agreed to plead guilty to the charged offense, and for which he

received a ten-day penalty to be served in isolation, with credit for time served.

The matter was referred to a United States Magistrate Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, for report and recommendation. The report of the Magistrate Judge recommending dismissal of the petition was filed on May 17, 2006. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On August 11, 2006, the Court received Petitioner's Objections to the Magistrate Judge's Report and Recommendation. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report,¹ and having made de novo findings with respect to the portions

¹The Court notes that Petitioner's objections largely restate the issues raised in his federal habeas petition. Petitioner also asserts that he was "single[d] out . . . for adverse treatment significantly different from that imposed on the community at large." Petitioner's Objections to Magistrate Judge's Report and Recommendation, at 5. Petitioner does not support this assertion, which he appears to raise for the first time, and the Court finds no reason to disturb the Magistrate Judge's findings that while Newman had been adequately warned by prison officials of the direct consequences of his guilty plea, there was no obligation to warn him of any collateral consequences prior to accepting his guilty plea. Magistrate Judge's Report and Recommendation, at 15.

objected to, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on May 17, 2006, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE and that judgment be entered in favor of Respondent.

Accordingly, the Court FINDS that the claim set forth in the instant petition is DENIED as Petitioner has not demonstrated that the result of the state court's decision in dismissing his habeas petition is neither legally nor factually unreasonable.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Order to Petitioner and to counsel of record for Respondent.

/s/ Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

September 13, 2006